



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

5636 Southern Boulevard
Virginia Beach, VA 23462
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Robert G. Burnley
Director

Francis L. Daniel
Tidewater Regional Director
(757) 518-2000

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO THE CITY OF NEWPORT NEWS

Registration number 61474

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1307, §10.1-1316, and §10.1-1319 between the State Air Pollution Control Board and City of Newport News, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Diesel" means capable of being fueled by distillate oil, liquid fuel which meets the ASTM specification for numbers 1 and 2 fuel oil.

6. "Facility" means the Lee Hall Water Treatment Plant located at 437 Waterworks Way and owned by the City of Newport News.
7. "Order" means this document, also known as a Consent Order.
8. "City" means the City of Newport News, owner of the Lee Hall Water Treatment Plant, located at 437 Waterworks Way, Newport News.
9. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
10. "Permit" means Stationary Source Permit To Install and Operate.
11. "Regulations" means Virginia Regulations for the Control and Abatement of Air Pollution (9 VAC 5-80-10 et seq.).

SECTION C: Findings of Fact and Conclusions of Law

1. The City owns the Lee Hall Water Treatment Plant Facility, located at 437 Waterworks Way, Newport News, VA.
2. The City reports that on August 23, 1999 Newport News Waterworks and Danis Environmental Industries, Inc. ("Danis") entered into contract to construct the Lee Hall Water Treatment Facility that includes the addition of the two diesel engine powered generators and one diesel engine driven pump. The contract requires Danis to obtain all necessary permits in the execution of the work; however, Danis failed to obtain the proper air quality permit prior to beginning actual construction. Upon learning the permit was not secured, the City submitted the necessary application to assist Danis in obtaining the required permit.
3. An air permit application dated December 31, 2003 was received by the Department on January 5, 2004 for construction of a diesel engine pump and two diesel generators at the Facility. The aggregate horsepower at 2,375 hp of the new diesel engine pump and two diesel generators, as listed in the air permit application, is not exempt and is subject to Virginia Regulations for the Control and Abatement of Air Pollution.
4. A DEQ inspection on January 5, 2004 found that the City had begun actual construction of the diesel engine pump and two diesel generators listed in the December 31, 2003 air permit application. The diesel engine equipment was in place although not operational, as the fuel lines had not been connected.
5. A review of DEQ files indicated that the air permit had not been issued for the diesel engine pump and two diesel generators at the Facility.
6. 9 VAC 5-80-1120(A)(Article 6) of the Regulations states: "No owner or other person shall begin actual construction, reconstruction, or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source."

7. 9 VAC 5-80-1110 (C)(Article 6) of the Regulations states: "'Begin actual construction' means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures."
8. 9 VAC 5-80-1110(C)(Article 6) of the Regulations states: "'Stationary source' means any building, structure, facility or installation, which emits any regulated air pollutant."
9. 9 VAC 5-80-100(C)(Article 6) of the Regulations states "The provisions of this article do not apply to any stationary source, emissions unit or facility that is exempt under the provisions of 9 VAC 5-80-1320."
10. 9 VAC 5-80-1320(B)(Article 6) of the Regulations states: "Facilities as specified below shall be exempt from the provisions of this article as they pertain to construction, modification, reconstruction or relocation."
11. 9 VAC 5-80-1320(B)(2)(b)(Article 6) of the Regulations states: Diesel engines with an aggregate rated brake (output) horsepower (hp) of less than 1,675 hp and diesel engines powering electrical generators having an aggregate rated electrical power output of less than 1,125 kilowatts."
12. The City constructed a diesel engine pump and two diesel generators without an air permit as required by 9 VAC 5-80-1120(A)(Article 6).
13. A Notice of Violation was issued to the City of Newport News on January 29, 2004 addressing the above findings.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316.C, orders the City of Newport News, and the City of Newport News voluntarily agrees, to pay a civil charge of \$3,000.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," shall indicate the City of Newport News' Federal Identification Number, and shall be sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the City of Newport News, for good cause shown by the City of Newport News, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to the City of Newport News by DEQ on January 29, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the City of Newport News admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The City of Newport News consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The City of Newport News declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by the City of Newport News to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The City of Newport News shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The

City of Newport News shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The City of Newport News shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the City of Newport News. Notwithstanding the foregoing, the City of Newport News agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the City of Newport News. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the City of Newport News from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, the City of Newport News voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of July 2, 2004.

Francis L. Daniel
Francis L. Daniel, Regional Director
for Robert G. Burnley, Director
Department of Environmental Quality

The City of Newport News voluntarily agrees to the issuance of this Order.

By: Eileen M. Leininger
Date: 7/1/04

Commonwealth of Virginia

City/County of Newport News

The foregoing document was signed and acknowledged before me this 1st day of July, 2004, by Eileen M. Leininger, who is
(name)
Department of Public Utilities of the
Acting Director of the City of Newport News, on behalf of the City.
(title)

John A. Mader
Notary Public

My commission expires: July 31, 2005